



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 202, 211, 212

[Docket No. 2018-1]

Streamlining the Single Application and Clarifying Eligibility Requirements

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 16, 2017, the U.S. Copyright Office released a new version of the Single Application, an online registration option that allows a single author to register a claim in one work that is solely owned by the same author and is not a work made for hire. The new Single Application includes enhanced features that should improve the user experience, increase the efficiency of the examination, and reduce the correspondence rate for these types of claims. To coincide with these technical upgrades, the Office is now proposing to amend its regulations to clarify the eligibility requirements for the Single Application, and codify certain practices set forth in the *Compendium of U.S. Copyright Office Practices, Third Edition*. In addition, the proposed rule confirms that the Single Application may be used to register one sound recording and one musical work, literary work, or dramatic work—notwithstanding the fact that a sound recording and the work embodied in that recording are separate works. The proposed rule will also clarify the eligibility requirements for the Office’s Standard Application, which is used to register certain works that are ineligible for the Single Application, such as works with more than one owner. In addition, the proposed rule will eliminate the “short form” version of the Office’s paper applications, and make technical amendments to the

regulations governing preregistration, architectural works, mask works, vessel designs, the unit of publication registration option, and the group registration option for database updates. The proposed rule will also allow for paper applications to be certified with a typed or printed signature by removing the requirement that the certification must include a “handwritten” signature of the certifying party.

DATES: Comments on the proposed rule must be made in writing and must be received in the U.S. Copyright Office no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://www.copyright.gov/rulemaking/streamlining-single>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Anna Chauvet, Assistant General Counsel, by telephone at 202-707-8040 or by email at rkas@loc.gov, ebertin@loc.gov, or achau@loc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

In 2013, the Office issued an interim rule that established a new registration option known as the “Single Application.” This application was designed “for those authors who file the simplest kind of [claim].” 78 FR 38843, 38845 (June 28, 2013). The purpose of the Single Application was to “encourage more individual creators to register their works” and to “foster the development of a more robust public record.” *Id.* at 38844, 38845. Specifically, the Single Application may be used to register “a single work by a single author that is owned by the person who created it.” 37 CFR 202.3(b)(2)(i)(B). The application must be submitted “electronically” through the Office’s website, and “[t]he claimant and the author must be the same.” *Id.* §§ 202.3(b)(2)(i)(A), (B).

Certain types of works are not eligible for the Single Application option, as they create a more complex application that takes additional time to examine. For example, the Single Application cannot be used to register “works by more than one author,” “works with more than one owner,” collective works, unpublished collections, units of publication, databases, or Web sites. *Id.* § 202.3(b)(2)(i)(B). Instead, an applicant must submit the Office’s “Standard Application” through the Office’s electronic registration system, or a paper application submitted on Forms PA, SR, TX, VA, or SE to register these types of works.¹

Although the Office intended for the Single Application to be “administratively simple” to process, 78 FR at 38843, in practice, claims submitted on the Single

¹ In 2014, the Office announced that the term “single” would be used to identify “the newly introduced single author/single work offering,” and the term “standard” would be used to identify the “standard” version of the online application, as well as the Office’s printed forms. 79 FR 15910, 15911 n.10 (Mar. 24, 2014). In practice, however, the Office uses the term “standard” only when referring to the online application. When referring to its printed forms, the Office uses the term “paper application” or the specific name for each form, such as “Form PA” or “Form SR.” The proposed rule updates the regulation to reflect the current terminology.

Application often require more correspondence than other filings. For example, mistakenly using the Single Application for works co-created or co-owned by two or more people is one of the most common reasons that the Office must correspond with applicants. This unexpected administrative burden on the Office appears to stem from the manner in which its electronic registration system used to direct applicants to either the Single Application or Standard Application.

On December 16, 2017, the Office released a new and improved version of the Single Application to address these issues. Applicants must now affirmatively select a link that is specifically designated for claims involving “one work by one author.” The new version of the Single Application describes its eligibility requirements in a clear and concise manner, and applicants must confirm that they have read and understood these requirements before they may use this form. The Office also released an updated circular that provides detailed information about the new version of the Single Application. *See* Copyright Office, Circular 11: Using the Single Application (2017). In addition, the new version offers enhanced features that should improve the user experience, increase the efficiency of the examination, and promote the overall quality of the registration record. Information concerning these new features is available on the Office’s Web site at <https://www.copyright.gov/eco/updates/index.html>.

B. The Proposed Rule

The Office is proposing to amend the regulations governing the Single Application and the Standard Application to better reflect the technical upgrades that have been made to the Office’s electronic registration system, eCO (the “Proposed Rule”). The Proposed Rule will clarify the eligibility requirements for each application, and

codify certain practices that are set forth in the *Compendium of U.S. Copyright Office Practices, Third Edition* (“*Compendium*”). In addition, the Proposed Rule will eliminate the “short form” version of the Office’s paper applications, and make several technical amendments to improve the organization, consistency, and readability of the regulations. The Proposed Rule will also allow paper applications to be certified with a typed or printed signature by removing the requirement that the certification must include a “handwritten” signature of the certifying party. The Office welcomes public comment on each proposal.

1. The Single Application

The Proposed Rule improves readability of the Office’s regulations by restating the eligibility requirements for the Single Application. The Proposed Rule confirms that: (1) each claim must be limited to one work (with a limited exception for sound recordings described below); (2) each work must be created by one individual; (3) all the content appearing in the work must be created by that same individual; and (4) the individual must be the sole owner of all rights in the work. These changes are intended to clarify the current requirements and do not represent a substantive change in policy.

The Proposed Rule states that the Single Application may not be used to register collective works, databases, or Web sites—because they often contain multiple works of authorship—or choreographic works or architectural works²—because such claims tend

² This requirement has appeared in the *Compendium*, the help text for the Single Application, and the Office’s informational brochure for some time. See *Compendium*, secs. 609.1(A)–(C) (3d ed. 2017); *Help: Created*, U.S. Copyright Office, <https://www.copyright.gov/eco/help-created.html> (last visited Jan. 26, 2018); *Question 3: Does the work you are sending contain material created only by this author?*, U.S. Copyright Office, <https://www.copyright.gov/eco/help-owned.html> (last visited Jan. 26, 2018).

to be very complex. *See* 78 FR at 38445 (stating that the Single Application is intended “for those authors who file the simplest kind of [claim]”).

Although the Single Application may be used only to register one work by one author, there is a limited exception for sound recordings. The Proposed Rule confirms that the Single Application may be used to register one sound recording and one musical work, literary work, or dramatic work—notwithstanding the fact that a sound recording and the work embodied in that recording are separate works. To do so, applicants must satisfy the conditions set forth in 37 CFR 202.3(b)(1)(iv)(A)–(C), as well as the generally applicable requirements for the Single Application. In particular, the author of the sound recording and the work embodied in that recording must be the same individual, that individual must own the copyright in both works, and that individual must be the only performer featured in the recording. For example, the Single Application could be used to register a song and sound recording written and performed solely by Paul. But it could not be used to register a song written by Paul together with a recording of that song performed solely by Art or jointly performed by Art and Paul. Although this practice is not mentioned in the current regulation, it has appeared in the *Compendium*, the circular, and the help text, and thus does not represent a substantive change in policy.³ The Office invites public comment, however, on whether the Single Application should be permitted to register one sound recording and one musical work, literary work, or dramatic work in

³ Similarly, the regulations governing the Standard Application and the paper applications state that an applicant may register a sound recording together with the musical work, dramatic work, or literary work embodied in that recording, provided that both works are fixed in the same phonorecord, the applicant has submitted one application for both works, and the claimant for both works is the same person or organization. 37 CFR 202.3(b)(1)(iv)(A)–(C). When submitting an online application, the applicant must select “sound recording” as the type of work. When submitting a paper application, the applicant must use Form SR. 37 CFR 202.3(b)(1)(iv), (b)(2)(ii).

cases where the author of the sound recording and the work embodied in that recording is the same individual and that individual also owns the copyright in both works, but that individual is *not* the only performer featured in the recording (*e.g.*, whether a Single Application should be permitted to register a song written by Paul, where Paul is the author of the sound recording, but the recording features Art and Paul performing the song).

If the Office determines that a particular work does not satisfy the eligibility requirements for the Single Application, it will refuse to register the claim. In particular, works made for hire or works created by two or more individuals are not eligible for the Single Application. Applicants may not use the Single Application if the deposit contains material created by two or more authors (even if they only intend to register material created by one of those individuals). For the same reason, the Single Application may not be used to register a derivative work based on a preexisting work by a different author. And a work created solely by one individual cannot be registered with the Single Application if the author transferred his or her rights to another party, if the work is co-owned by two or more parties, or if the author is deceased. *See* 82 FR 21551, 21553 (May 9, 2017); 78 FR at 38844.

The Proposed Rule provides that a Single Application may be submitted by the author/claimant. It also maintains, for now, the current practice of permitting a duly authorized agent of the author/claimant to file such an application, provided that the agent is identified in the correspondent section of the application. In addition, the Proposed Rule confirms that a Single Application may be certified only by the author/claimant or a duly authorized agent of the author/claimant that has been identified in the application. If

the Office determines that a third-party agent has filed a claim on the Single Application, but has failed to identify itself in the application, the Office will refuse to register the claim.

The Office, however, is considering whether to continue allowing an authorized agent of the author/claimant to submit a Single Application. The Single Application is intended to benefit individual authors by allowing them to register their works for a discounted filing fee. The Office recognizes that many authors are not familiar with the electronic system, and that some individual creators may prefer to have an authorized agent submit the application on their behalf. But, in the Office's experience, the vast majority of Single Applications are submitted by publishers, producers, distributors, or other corporate entities—and it is unclear whether these entities need a discounted filing fee to encourage them to register works. In addition, it is unclear whether this widespread corporate use of the Single Application has impacted the overall cost recovery for the Office's registration services. The Office welcomes public comment on this issue.

2. The Standard Application

Applicants may use the Standard Application to register one work by one author, even if the work is eligible for registration with the Single Application. The Office encourages applicants to use the Standard Application if they are unsure if the work satisfies the strict eligibility requirements for the Single Application.

The Proposed Rule confirms that the Standard Application may be used to register any work that is eligible for registration under sections 408(a) and 409 of the Copyright Act, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, a compilation, a unit of publication, or a sound recording and the

literary, dramatic, or musical work embodied in that recording.⁴ In addition, the Proposed Rule clarifies that the Standard Application may not be used to seek a supplementary registration under section 408(d), a renewal registration under section 304, a registration for a restored work under section 104A, or a registration for a mask work or a vessel design under chapters 900 or 1300. Likewise, the Standard Application may not be used to register a group of related works under section 408(c)(1), unless it is expressly permitted under the Office's regulations.⁵ Instead, applicants should use the forms specifically designated for these types of claims.⁶

The Proposed Rule maintains that a Standard Application or a paper application may be submitted by an author, a claimant, a party that owns one or more of the exclusive rights in the work, or a duly authorized agent of the aforementioned parties. In addition, the Proposed Rule confirms that a Standard Application or a paper application may be certified by an author, a claimant, a party that owns one or more of the exclusive rights in the work, or a duly authorized agent of one or more of these parties. These revisions are intended to clarify the existing regulation, and do not represent a substantive change in policy.

⁴ The Proposed Rule also confirms that these types of claims may be submitted with a paper application. The Office notes that it is considering whether to eliminate the option of using the Standard Application to register an "unpublished collection" and replace it with a new group registration option for unpublished works. *See* 82 FR 47415 (Oct. 12, 2017).

⁵ For example, the Standard Application may be used to register a group of secure test items. 37 CFR 202.13(c)(1). The proposed rule also confirms that the Standard Application may be used to register a group of updates or revisions to a photographic database (if the applicant has obtained prior authorization from the Visual Arts Division); by contrast, applicants must use a paper application to register any other type of group database claim.

⁶ The proposed rule confirms that this same principle applies to claims submitted on Forms PA, SR, TX, VA, and SE.

In addition, the Proposed Rule will allow for paper applications to be certified with a typed or printed signature by removing the requirement that the certification *must* include a “handwritten” signature of the certifying party.

3. Short Form Paper Applications

The Office is proposing to eliminate the “short form” version of its paper applications, namely, Short Form PA, Short Form TX, Short Form VA, and Short Form SE. The short forms are similar in many respects to the Single Application. Short Forms PA, TX, and VA may be used to register “a single work,” but only if a “living” individual is the sole author and owner of that work. 37 CFR 202.3(b)(2)(ii)(B). Likewise, the work cannot be a work made for hire, or a compilation or derivative work that contains previously published or previously registered material.

Although these requirements are clearly stated in the instructions, applicants often used paper short forms to register works that could not be registered with these forms, such as claims involving multiple works or works co-created or co-owned by two or more people. The Office frequently had to contact the applicant to request additional information or permission to correct the application. And in all cases, the Office had to scan the short form into the registration system and input the information by hand, which is a cumbersome, labor-intensive process. Due to these recurring problems, the Office removed the short paper forms from its Web site several years ago and rarely receives these forms today.⁷

The Office recognizes that some applicants may prefer to submit their claims with paper applications, or they may be unable to use the electronic system. Eliminating the

⁷ Applicants may obtain copies of the short forms upon request, but to do so they must contact the Public Information Office by telephone or mail.

paper short forms should not have an adverse effect on these parties, however, because the Office is not proposing to eliminate the “long” version of these forms. The Office will continue to accept paper Forms PA, TX, VA, and SE, which may be used to register the same types of works as the short paper forms, and the filing fee for these forms is the same as the filing fee for the short forms.

4. Technical Amendments

The Proposed Rule makes a number of technical amendments that do not represent substantive changes in policy. It removes the terms “single” work, “single” application, “single” filing fee, and “single” unit of publication, and replaces them with the terms “one work,” “one application,” “one filing fee,” and “the same unit of publication.” The changes also clarify that the Single Application cannot be used to preregister a unit of publication, and it cannot be used to register a mask work, vessel design, or a group of updates or revisions to a database. In addition, the Proposed Rule clarifies that an application for registration must include the information required by the relevant form, and it must be accompanied by the appropriate deposit required by 37 CFR 202.4, 202.20, or 202.21, as the case may be.

List of Subjects

37 CFR Part 201

Cable television, Copyright, Jukeboxes, Recordings, Satellites.

37 CFR Part 202

Claims, Copyright.

37 CFR Part 211

Computer technology, Science and technology, Semiconductor chip products.

37 CFR Part 212

Vessels.

In consideration of the foregoing, the U.S. Copyright Office proposes amending 37 CFR parts 201, 202, 211, and 212, as follows:

Part 201 – GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. In § 201.3(c)(1) remove the word “standard”.

Part 202 -- PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

3. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

4. Amend § 202.3 as follows:

- a. Revise paragraphs (b)(2)(i) introductory text, (b)(2)(i)(A) and (B).
- b. Removing the word “submission” and adding in its place “application”, removing the word “application” and adding in its place “filing”, and removing the word “fund” and adding in its place “funds” in paragraph (b)(2)(i)(C).
- c. Removing the word “payment” and adding in its place “filing fee” in paragraph (b)(2)(i)(D).
- d. Add a heading to paragraph (b)(2)(ii) and revise paragraph (b)(2)(ii)(A).
- e. Remove paragraph (b)(2)(ii)(B)
- f. Redesignate paragraphs (b)(2)(ii)(C) and (D) as paragraphs (b)(2)(ii)(B) and (C).
- g. Redesignate paragraph (b)(3) as paragraph (b)(2)(ii)(D).

- h. Remove and reserve paragraph (b)(3).
- i. In paragraph (b)(5)(i) introductory text remove the words “a single application” and add in their place “one application”, and remove the words “a single registration” and add in their place “a group registration”.
- j. In paragraph (b)(5)(i)(F) remove the words “a single” and add in their place “the same”.
- k. In paragraph (b)(5)(ii) introductory text remove the words “single registration” and add in their place “group registration”, remove the words “a single date” wherever they appears and add in their place “one date”, and remove the words “a single calendar” and add in their place “the same calendar”.
- l. In paragraph (b)(5)(ii)(A) remove “(b)(2)” and add in its place “(b)(2)(ii)(A)”, and remove the word “electronically” and add in its place “electronically using the Standard Application”.
- m. Revise paragraphs (c)(1) and (2).
- n. Revise paragraph (c)(3).

The revisions and additions read as follows:

§ 202.3 Registration for copyright.

* * * *

(b) * * *

(2) * * *

(i) *Online applications.* An applicant may submit a claim through the Office’s electronic registration system using the Standard Application, the Single Application, or the applications designated in § 202.4.

(A) *Standard Application.* The Standard Application may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. The Standard Application may also be used to register a unit of publication under paragraph (b)(4)(ii) of this section, or a sound recording and a literary, dramatic, or musical work under paragraphs (b)(1)(iv)(A) through (C) of this section.

(B) *Single Application.*

(1) The Single Application may be used only to register one work by one author. All of the content appearing in the work must be created by the same individual. The work must be owned by the author who created it, and the author and the claimant must be the same individual.

(2) The Single Application may be used to register one sound recording and one musical work, dramatic work, or literary work if the conditions set forth in paragraphs (b)(1)(iv)(A) through (C) and (b)(2)(i)(B)(1) of this section have been met.

(3) The following categories of works may *not* be registered using the Single Application: collective works, databases, Web sites, architectural works, choreographic works, works made for hire, works by more than one author, works with more than one owner, or works eligible for registration under § 202.4 or paragraphs (b)(4)(ii) or (b)(5), (6), or (9) of this section.

* * * * *

(ii) *Paper applications.* (A) An applicant may submit an application using one of the printed forms prescribed by the Register of Copyrights. Each form corresponds to one of the administrative classes set forth in paragraph (b)(1) of this section. These forms are

designated “Form TX,” “Form PA,” “Form VA,” “Form SR,” and “Form SE.” These forms may be used to register a work under sections 408(a) and 409 of title 17, including a work by one author, a joint work, a work made for hire, a derivative work, a collective work, or a compilation. These forms may be used to register a unit of publication under paragraph (b)(4)(ii) of this section, and Form SR may be used to register a sound recording and a literary, dramatic, or musical work under paragraph (b)(1)(iv)(A) through (C) of this section.

* * * * *

(c) * * *

(1) As a general rule, an application for copyright registration may be submitted by any author or other copyright claimant of a work, the owner of any exclusive right in a work, or the duly authorized agent of any such author, other claimant, or owner. A Single Application, however, may be submitted only by the author/claimant or by a duly authorized agent of the author/claimant, provided that the agent is identified in the application as the correspondent.

(2) All applications shall include the information required by the particular form, and shall be accompanied by the appropriate filing fee, as required in § 201.3(c) of this chapter, and the deposit required under 17 U.S.C. 408 and §§ 202.20, 202.21, or 202.4, as appropriate.

(3) All applications submitted for registration shall include a certification.

(i) As a general rule, the application may be certified by an author, claimant, an owner of exclusive rights, or a duly authorized agent of the author, claimant, owner of exclusive

rights. A Single Application, however, may be certified only by the author/claimant or by a duly authorized agent of the author/claimant.

(ii) For online applications, the certification shall include the typed name of a party identified in paragraph (c)(3)(i) of this section. For paper applications, the certification shall include the typed or printed signature of a party identified in paragraph (c)(3)(i) of this section, and if the signature is handwritten it shall be accompanied by the typed or printed name of that party.

(iii) The declaration shall state that the information provided within the application is correct to the best of the certifying party's knowledge.

(iv) For online applications, the date of the certification shall be automatically assigned by the electronic registration system on the date the application is received by the Copyright Office. For paper applications, the certification shall include the month, day, and year that the certification was signed by the certifying party.

(v) An application for registration of a published work will not be accepted if the date of certification is earlier than the date of publication given in the application.

* * * * *

5. Amend § 202.16 by removing the words "*Preregistration as a single work.*" and add in their place "*Unit of publication.*", removing the words "a single application" and add in their place "one application", removing the words "a single preregistration fee" and add in their place "one filing fee", removing the words "a single unit" and add in their place "the same unit", and removing the words "a single work" and add in their place "one work" in paragraph (c)(4).

Part 211 – MASK WORK PROTECTION

6. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702, 908.

7. Amend § 211.4 by revising paragraph (d) to read as follows:

§ 211.4 Registration of claims of protection in mask works.

* * * * *

(d) *Registration for one mask work.* Subject to the exceptions specified in paragraph

(c)(2) of this section, for purposes of registration on one application and upon payment of one filing fee, the following shall be considered one work:

* * * * *

Part 212 –PROTECTION OF VESSEL DESIGNS

8. The authority citation for part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

9. Amend § 212.3 as follows:

a. In paragraph (f)(1), remove the words “a single make” and add in their place “the same make”, remove the words “a single application” and add in their place “one application”, remove the words “used for all designs” and add in their place “used to register all the designs”, and remove the words “each of the designs” and add in their place “each design” .

b. Revise paragraph (f)(2).

c. In paragraph (f)(4) remove the words “a single” and add in their place “one”.

The revision reads as follows:

§ 212.3 Registration of claims for protection of eligible designs.

* * * * *

(f) * * *

(1) * * *

(2) *One application.* Where one application for multiple designs is appropriate, a separate Form D-VH/CON must be used for each design beyond the first appearing on Form D-VH. Each Form D-VH/CON must be accompanied by deposit material identifying the design that is the subject of the Form D-VH/CON, and the deposit material must be attached to the Form D-VH/CON. The Form D-VH and all the Form D-VH/CONs for the application must be submitted together.

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Dated: January 31, 2018.

Sarang V. Damle,
General Counsel and
Associate Register of Copyrights

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